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May 15, 2012

Ms. Jocelyn Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

Re: Office of Regulatory Staff Petition to Review FCC Mandated Reductions to Intrastate Access Tariffs
Docket No. 2012-136-C

Dear Ms. Boyd:

Please find attached for filing a Petition Regarding Treatment of Interim LEC Fund on behalf of the South Carolina Telephone Coalition in the above referenced matter.

If you have any questions or need further information, please do not hesitate to contact me.

Very truly yours,

McNAIR LAW FIRM, P.A.

Margaret M. Fox

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MMF:rwm
Enclosure

cc: Parties of Record

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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

Docket No. 2012-136-C

In Re: Office of Regulatory Staff Petition to Review FCC Mandated Reductions to Intrastate Access Tariffs	)))))	**SOUTH CAROLINA TELEPHONE COALITION PETITION REGARDING TREATMENT OF INTERIM LEC FUND**

The South Carolina Telephone Coalition ("SCTC") hereby petitions the Public Service Commission of South Carolina ("Commission") asking the Commission to confirm that revenues received from the Interim LEC Fund ("ILF") are intrastate switched access revenues, and to provide instructions as to the reporting and treatment of such revenues for purposes of implementing the recent order of the Federal Communications Commission ("FCC") regarding intercarrier compensation reform.[1]

In support of its Petition SCTC would respectfully show unto this honorable Commission the following:

A. Transition to Bill-and-Keep

1. On November 18, 2011, the FCC issued an order comprehensively reforming the universal service and intercarrier compensation systems.[2] The FCC in the *USF-ICC Reform Order* adopts "bill-and-keep" as the default methodology for all intercarrier compensation

[1] *Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support*; *Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; and FCC 11-161, rel. Nov. 18, 2011 ("*USF-ICC Reform Order*").

[2] *See id*.

traffic.[3] Under a bill-and-keep arrangement, a carrier looks to its own end users, rather than to other carriers, to recover the costs of its network.[4] To the extent additional support is needed in order to ensure that end user rates remain affordable, the FCC directed that such support will come from the Connect America Fund established by the FCC and/or from state universal service funds.[5] The FCC adopted a gradual transition for terminating access of six years for price cap carriers and nine years for rate-of-return carriers.[6] The FCC has not addressed the transition of originating access at this time.

2. To begin the transition of switched access rates to bill-and-keep, the FCC capped all interstate switched access and reciprocal compensation rates effective December 29, 2011 (the effective date of the *USF-ICC Reform Order*).[7] The FCC also capped all intrastate rates (both originating and terminating) for price cap carriers, and terminating intrastate access rates for rate-of-return carriers, effective December 29, 2011.[8] The FCC directed both price cap and rate-of-return carriers to bring terminating intrastate switched end office and transport, and reciprocal compensation rates, into parity with interstate access rates in two steps, on July 1, 2012 and July 1, 2013. After that, both intrastate and interstate terminating switched end office rates and reciprocal compensation rates are to be transitioned down over a period of six years for price cap carriers (with the final reduction made on July 1, 2018) and nine years for rate-of-return carriers (with the final reduction made on July 1, 2020).[9]

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[3] *Id*. at ¶ 736.
[4] *See id*. at ¶ 737.
[5] *See id*.
[6] *Id*. at ¶ 739. SCTC companies are rate-of-return carriers at the federal level.
[7] *Id.* at ¶ 801.
[8] *Id*.
[9] *See id*. at ¶ 801 and Figure 9 (Intercarrier Compensation Reform Timeline).

B. Recovery Mechanism

3. To facilitate the gradual transition away from intercarrier compensation revenues, the FCC adopted a transitional recovery mechanism that allows ILECs to recover intercarrier compensation revenues, up to a defined baseline amount, from alternate revenue sources consisting of (1) incremental, limited increases in end user rates (through an Access Revenue Charge or "ARC"); and (2) where appropriate, universal service support through the Connect America Fund ("CAF").

4. The first step in transitioning to the recovery mechanism is for a carrier to determine its Eligible Recovery amount. For price cap ILECs, the baseline amount eligible for recovery is 90 percent of their Fiscal Year ("FY") 2011 interstate and intrastate access revenues for the rates subject to reform and net reciprocal compensation revenues.[10] For rate-of-return ILECs, the calculation is a little more complicated, but the concept is the same – *i.e.*, to calculate the difference between what the carrier was receiving in intercarrier compensation before reform and after reform, and provide carriers with the opportunity to recover that revenue (albeit on a reduced basis each year) through alternate sources of revenue. For rate-of-return carriers, the baseline for eligible recovery is based on their 2011 interstate switched access revenue requirement, plus FY2011 intrastate terminating switched access revenues and FY2011 net reciprocal compensation revenues.[11] Eligible Recovery for rate-of-return ILECs is then calculated as the difference between the baseline (subject to five percent annual reductions) and the revenues from the reformed intercarrier compensation rates in that year, based on actual minutes of use multiplied by the associated default rate for that year. To simplify: In year one, the carrier would calculate what it was receiving in intercarrier compensation in the base year

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[10] *See id*. at ¶ 851.
[11] *Id.*

(FY2011), reduce that amount by 5%, then subtract the amount it actually receives in intercarrier compensation in that year. That amount is the ILEC's "Eligible Recovery," *i.e.*, the amount it will be eligible to recover from its end users (through the ARC) and through an explicit federal universal service fund (CAF).

5. Once the Eligible Recovery is determined for a carrier, the carrier may[12] implement an ARC to the extent its basic local service rates (including mandatory per-line charges such as state and federal Subscriber Line Charges, mandatory EAS charges, E911 charges, etc.) are below the FCC's established benchmark of $30.00.[13] The ARC is to be implemented in increments not to exceed $.50 for a period of up to 5 years for price cap ILECs and 6 years for rate-of-return ILECs (i.e., total ARC not to exceed $2.50 for price cap carriers and $3.00 for rate-of-return carriers).[14] The amount that cannot be recovered through the ARC may be recovered through the CAF.[15]

6. Carriers are required to submit to the appropriate state regulatory commissions data regarding all FY2011 switched access MOU and rates, broken down into categories and subcategories corresponding to the relevant categories of rates being reduced.[16] The FCC expects states to monitor implementation of the recovery mechanism and related intrastate tariff filings necessitated by the access reductions.[17] Price cap ILECs eligible for CAF support must also file the information with the Universal Service Administrative Company ("USAC"), which will work with the FCC's Wireline Competition Bureau to implement processes for

[12] Carriers are not required to implement the ARC, but it will be imputed for purposes of evaluating the need for additional recovery. *See id*. at ¶ 908 and fn. 1781.
[13] *See id*. at ¶¶ 913-914.
[14] *See id*. at ¶ 908. The referenced rate is for residential and single-line business customers. The maximum increment for multi-line business customers is $1.00 per line.
[15] *Id*. at ¶ 905.
[16] *Id*. at ¶ 880.
[17] *Id*. at ¶¶ 880, 898, 903.

administration of CAF ICC support. Rate-of-return ILECs will also file federal and state access tariffs (with the National Exchange Carrier Association filing a tariff for NECA pool members), as well as information with USAC.

C. Interim LEC Fund is Bulk-Billed Intrastate Switched Access

7. ILF revenues are revenues from bulk-billed intrastate switched access service and, therefore, should be considered intrastate switched access revenues for purposes of determining the Eligible Recovery amount for ILF recipients in implementing the federal recovery mechanism. A portion of the intrastate access revenues of non-AT&T ILECs in South Carolina is billed and collected through the ILF, an access billing mechanism created by the Commission in Order No. 1996-882,[18] as directed by the South Carolina General Assembly in S.C. Code Ann. § 58-9-280(L)-(M).

8. The ILF was sized to equal the amount of the reduction in revenues resulting from the ILECs reducing their intrastate toll switched access rates to the level of the largest LEC operating in the state (AT&T), offset by adjustment of other rates (i.e., basic local service rates) up to statewide average rates. Upon creation of the ILF, intrastate access revenues billed directly by participating ILECs on a per-minute basis were reduced to rates comparable to those charged by AT&T, end user rates were rebalanced to recover some of the lost access revenues, and the remaining intrastate access revenues were moved to the ILF. The Office of Regulatory Staff ("ORS"), as the Administrator of the ILF, bills interexchange carriers (i.e., those entities receiving an access or interconnection rate reduction from LECs) for their share of ILF based on their relative share of the ILF recipients' intrastate switched access minutes of use ("MOU"),

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[18] *See also* Commission Order Nos. 1997-710 (Denying Reconsideration), 2001-396 (Order on Remand), and 2001-632 (Denying Reconsideration).

using the ILF recipients' switched access MOU billing information. ORS sends out a worksheet to each interexchange carrier showing the access MOUs reported by each ILEC for that carrier. The carrier's ILF requirement is calculated by multiplying the total MOUs by a per-MOU factor. ORS bills and collects those amounts from the interexchange carriers, and the resulting revenue is distributed to each ILEC recipient as though it were billed directly. Thus, ILF is bulk-billed intrastate switched access because it is a mechanism specifically mandated by state law to fund intrastate switched access reductions and because it is required by state law to be billed to interexchange carriers who would otherwise pay access directly to the carriers participating in ILF, based on the contributing interexchange carriers' relative share of intrastate switched access minutes of use.

9. FCC rules do not require ILF to be expressly stated in the ILECs' intrastate access tariffs in order to be included in the recovery mechanism. ILF is mandated by state statute,[19] as implemented by Commission order.[20] FCC rules expressly provide: "Nothing in this section shall be construed to require a carrier to file or maintain a tariff if it is not otherwise required to do so under applicable law."[21] FCC rules also provide that, with respect to intrastate switched access services, "LECs *who are otherwise required to file tariffs*" must tariff rates no higher than the transitional rates set forth in the *USF-ICC Reform Order*.[22] In the case of ILF, LECs are not "otherwise required to file tariffs" because the mechanism is created by state law.

10. Even if one could argue that ILF must be expressly stated in the ILECs' intrastate access tariffs in order to be included in the recovery mechanism, FCC rules define "tariffs"

[19] S.C. Code Ann. § 58-9-280(L)-(M).
[20] Order No. 1996-882 in Docket No. 1996-318-C.
[21] 47 C.F.R. § 51.905(c).
[22] 47 C.F.R. § 51.905(b) (emphasis added).

broadly to include "tariffs, price lists *or other instrument* (collectively 'tariffs')."[23] Thus, to the extent the FCC may require actual tariffed rates, ILF is part of the ILECs "tariffed" rates for intrastate switched access service, because it is defined in state law and by Commission order, which constitute "other instruments" that are considered part of the tariffed rate for intrastate switched access service in South Carolina.

11. FCC rules provide that "residual rate elements" like ILF are to be included in the Composite Terminating End Office Access Rate that will be reduced and transitioned to the federal recovery mechanism, as described above.[24]

12. It is consistent with relevant FCC and Commission policy, and in the public interest, to treat ILF as part of the ILEC recipients' intrastate access revenues for purposes of the federal recovery mechanism. South Carolina has been very progressive in the area of telecommunications regulation. The legislature and the Commission took steps early on to reduce high intrastate switched access rates, rebalance low end user rates, and move a portion of switched access revenues to the ILF – an explicit funding mechanism. Now that the FCC has mandated all states to do the same, and has created a federal funding mechanism for these purposes, South Carolina and its citizens should be permitted to participate in that effort as well. If ILF is not moved to the federal recovery mechanism, South Carolinians will be denied the opportunity to recover some portion of their intercarrier compensation revenues from the federal

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[23] 47 C.F.R. § 51.905(b)(2).

[24] *See USF-ICC Reform Order* at ¶ 801 (Intercarrier Compensation Reform Timeline) (reflecting reductions in terminating switched end office rates and citing to 47 C.F.R. § 51.903(d)); 47 C.F.R. § 51.903(d) (defining End Office Access Service for incumbent local exchange carriers to include "any rate elements assessed on local switching access minutes, including … residual rate elements"); note to 47 C.F.R. § 51.903(d) ("residual rate elements may include, for example, state Transport Interconnection Charges, Residual Interconnection Charges, and PICCs.") The FCC's list is not exhaustive, but includes examples of what may be considered a residual rate element. For the reasons stated herein, ILF is bulk-billed access and, therefore, may be considered a residual rate element associated with local switching access minutes.

recovery mechanism, as other states are permitted to do, while at the same time being required to foot the bill for those other states – states that are just now taking action to reduce intrastate access rates.

13. SCTC respectfully asks that the Commission act on this Petition expeditiously, in light of the short time frames provided by the FCC for implementation of its *USF-ICC Reform Order*.

WHEREFORE, the South Carolina Telephone Coalition respectfully requests that this honorable Commission:

(1) confirm that revenues received from the Interim LEC Fund are intrastate switched access revenues;

(2) confirm that revenues received from the Interim LEC Fund should be treated as intrastate switched access revenues for purposes of implementation of the FCC *USF-ICC Reform Order*, as described herein;

(3) grant the above relief on an expedited basis to allow SCTC member companies to timely comply with the time frames set forth by the FCC in its *USF-ICC Reform Order*;

(4) appoint a Hearing Examiner in this matter to help expedite the matter; and

(5) grant such other and further relief as is just and proper.

Respectfully submitted,

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By: ______________________________

Attorneys for South Carolina Telephone Coalition

May 15, 2012

Columbia, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2012-136-C

In Re: Office of Regulatory Staff Petition to Review FCC Mandated Reductions to Intrastate Access Tariffs	))))	**CERTIFICATE OF SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the attached Petition on behalf of the South Carolina Telephone Coalition upon the following parties causing said copy to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto, and addressed as follows:

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May 15, 2012

Columbia, South Carolina